

# Tyndall AFB Preventive Law Program Series

## Legal Assistance Series

### **REAL ESTATE BROKERS WHAT YOU NEED TO KNOW**

*This handout contains basic information. If you have specific questions, come in to see a Judge Advocate for legal assistance.*



**OFFICE OF  
THE STAFF JUDGE ADVOCATE 325 FW/JA  
TYNDALL AFB, FL 32403**



## **WHAT YOU NEED TO KNOW ABOUT REAL ESTATE BROKERS**

If you are buying or selling a home, you may want to consider using a real estate broker. Although you are not required to use a one, real estate brokers may be able to provide information about real estate values, financing, and standard sales agreements. A real estate broker can advertise your property in order to find a “ready, willing and able purchaser” for your home. The following information may help you decide whether you want to hire a real estate broker, and what services and terms you may wish to arrange.

You can find real estate brokers through friends, advertisements, and the Yellow Pages, or through the Internet. Florida real estate brokers and salespersons must be licensed under Florida law. Chapter 475 of the Florida statutes regulates real estate brokers. In addition, brokers must supervise and are responsible for the conduct of salespersons that place their licenses with a real estate brokerage. For simplicity, this brochure will refer to brokers and salespeople collectively as “brokers.”

Before selecting a real estate broker to help you buy or sell a home, you first may want to interview brokers from several firms. Ask them to provide you with the names and phone numbers of previous clients in your neighborhood, if possible, to call as references. You may also wish to inquire as to how many homes they have sold in your area and the average time it took for a sale to occur. Ask if they are “Realtors.” A realtor is a broker who is a member of the National Association of Realtors, and has access to additional advertising materials, such as listing services, as well as standards of practice in addition to those mandated by the State of Florida. One of the most important tools for a “Realtor” is the Multiple Listing Service (MLS). The MLS will be discussed in greater detail below. It is not however required that a broker be a “Realtor.” The State of Florida only requires that the broker be licensed.

### **SELLING YOUR HOME THROUGH A BROKER**

If you decide to sell your home with the help of a broker, you will want to ask each broker a wide range of questions dealing with issues of marketing, fees, “listing agreements” and other contractual matters. A listing agreement is the contract between you and the broker and includes such items, as the price you are willing to accept for your home and the commission the broker will receive. Below are some questions and ideas you might want to discuss with a broker:

#### **What sales price would you suggest for my home?**

To price your home realistically, you should ask the brokers you interview for the recent asking prices and sales prices of comparable homes in comparable neighborhoods. Be wary of a broker who suggests an asking price substantially out of line with the suggestions of other brokers. Ask how he or she arrived at this price.

## **How would you plan to market my home?**

Most sellers want the broker to place their home on the MLS. The MLS is a computerized broker information network, which publicizes homes for sale. Most brokers rely heavily on the MLS to select homes to show potential buyers. The MLS also can help you and the broker set a price for your home because it provides current asking and sales prices of homes that are comparable to yours.

In addition to using the MLS, brokers usually advertise a home for sale through the newspaper, holding open houses and through the Internet. Brokers often have additional websites to advertise property. You may wish to ask each broker you interview where and how frequently the broker would advertise your home, how frequently the broker would hold an open house, and what other marketing techniques he or she might use.

You also may wish to ask how each broker would assist a buyer in locating financing. You will want to know which lenders are offering the most attractive financing packages so that you or the broker can suggest them to potential buyers. You also may wish to discuss what seller-financing options you could offer to attract buyers.

## **How much would you charge me?**

You, as the seller, will probably pay a commission to the broker at settlement for finding a buyer for your home. Your own broker, however, may not receive the full commission. Typically, your broker will place your home on the MLS with an offer to split the commission with any other broker who finds the buyer. Many home sales involve two brokers who split the commission paid by the seller. A typical commission charged by brokers is 6% percent.

## **Are you willing to negotiate a lower commission rate?**

Although commission rates may appear to be relatively standard within your community, it is important to remember that law does not set commission rates, and you may be able to negotiate a lower rate. For example, some brokers may accept a lower commission rate in order to get your business. Other brokers may agree to a lower commission in exchange for performing fewer services for you, such as reducing the number of newspaper advertisements and open houses. Some may agree to a lower rate if they themselves find the buyer for your home and do not need to split the commission with another broker. However, a lower commission may mean that other brokers who cooperate with your broker may not be willing to show your home to their clients as a priority and will favor those cooperating brokers who have the standard “split.”

You also may be able to negotiate an arrangement where the broker accepts a lower commission if the house is sold within a certain period of time. For example, you might agree to pay your broker a 6% commission if the broker finds a buyer within 60

days and a reduced commission if the broker takes longer than that to sell your home. In addition, in order to help finalize a sale, a broker sometimes will reduce his or her commission to narrow the gap between your minimum selling price and a buyer's offer.

### **What type of “listing contract” will you want me to sign?**

In Florida, no contract for commission or compensation is valid unless the broker is licensed. Fla. Stat. § 475.41. You will be asked to discuss and sign a contract with your broker. This contract includes the terms of sale for your home (such as the asking price), your brokerage arrangements (such as what the broker will do for you and how much you will pay the broker), and the expiration date of the contract. All listing contracts must specify a beginning and ending date. While brokers prefer as much time as possible to locate a buyer, you may wish to limit the contract period to 90 days, for example. You may also want to reserve the right to cancel the contract upon reasonable notice. These options allow you to hire a new broker if, for example, you are dissatisfied with the services you are receiving. Never sign listing agreements with more than one broker at a time or you may be obligated to pay several commissions. Make sure that the services and terms that are important to you are written into your listing contract.

Generally, if you want your home placed on the MLS, there are two basic kinds of contracts you may enter into with a broker.

In an **exclusive right-of sale contract**, you agree to pay your broker a commission no matter who finds the buyer - even if you find the buyer independently of a broker. Most brokers prefer this contract.

If you know specific people who may be interested in buying your home, you will want to include a special “reserve clause” in this type of contract. This reserve clause would allow you to sell your property to any specifically named person and would require you to owe either no commission or a reduced commission.

In an exclusive right-to-sell contract, your broker usually benefits regardless of who finds the buyer. However, you still may be able to negotiate a contract that is more favorable to you. For example, you may try to negotiate a lower commission, more extensive advertising, or other special terms and services in return for your agreement to sign an exclusive right-to-sell contract. You should be sure to have the negotiated terms written into the contract.

In an **exclusive agency contract**, you agree to pay your broker a commission if that broker, or any broker, finds the buyer. However, if you locate the buyer yourself, without a broker's help you owe no commission, or, perhaps, a reduced commission. Although there are some restrictions on who may use the MLS and what types of listings will be accepted, you should be able to have your home placed on the MLS under an exclusive agency contract.

Because an exclusive agency contract does not guarantee a broker a commission if the house is sold, some brokers may not be willing to enter into an exclusive agency contract or may not provide you with as much service under this type of contract. But some brokers may agree to your terms without cutting back on services. That is why it is important to shop for a broker who will meet your needs.

**What other information will be included in my listing contract?**

The asking price for your home will be included in any listing contract in which you enter. Carefully set the asking price. If you set the initial asking price too high, you may turn away potential buyers.

## **BUYING A HOME THROUGH A BROKER**

If you are buying a home, you also may want to talk to various real estate brokers about your housing needs. This will help you determine which broker is best suited to assist you. You especially may want to ask a broker about some of the issues discussed below.

**Whom do you legally represent - the buyer, the seller, or both of us?**

In Florida, brokers are subject to discipline for failing to give notice and obtain consent regarding representation. Fla. Stat. § 475.25. If you are buying a home, you may believe as many consumers do that the broker you have chosen legally represents your interests. While this may be the case, it is not necessarily so. Real estate brokers may act on behalf of the seller, the buyer, or both. Florida law requires the broker to disclose in writing, which party or parties the broker represents in the transaction and what the broker can or cannot discuss with the various parties. The disclosure requires that the broker state his fiduciary obligations to you. These include but are not limited to, honesty, fair dealing, full accounting of funds, and loyalty.

If the broker intends to operate as a transaction broker, that is, a broker who is technically negotiating on behalf of both parties, he must disclose this relationship to all parties in writing and you must consent to his acting in that capacity. Florida law requires that you be given a standard form to sign acknowledging that you have advised of all of these rules and regulations. A transaction broker may not disclose among other items:

1. To the buyer, that the seller will accept a price less than the asking or listed price, unless otherwise instructed in writing by the seller.
2. To the seller, that the buyer will pay a price greater than the price submitted in a written offer to the seller, unless otherwise instructed in writing by the buyer.
3. The motivation of any party for selling, buying, or leasing property unless otherwise instructed in writing by the respective party.

4. That the seller or buyer will agree to terms other than those offered.

**Will you agree to represent me as a “buyer's broker?”**

Any broker may agree to represent you, as the homebuyer, and some brokers are beginning to specialize in legally representing buyers. Having a “buyer's broker” may offer you some advantages. For example, a buyer's broker may be more motivated to spot problems with a home you are considering and may be able to obtain more favorable purchasing terms. Buyer's brokers may or may not charge you a fee. This is because a buyer's broker can legally share in the commission paid by the seller as long as you (the homebuyer), the seller, and the seller's broker agree to this. You can try to locate buyer's brokers by asking friends and looking for advertisements in your newspaper and the Yellow Pages.

**Will you offer me any special benefits or discounts?**

If you are buying - or selling - a home, you may want to consider looking for brokers who offer you special benefits. These may include a promise to buy your home at a stipulated price if it is not sold within a certain period of time. Remember that hiring a broker does not guarantee success in selling your home. Taking the time to choose the right broker to represent you will greatly assist in securing a successful transaction.

The Air Force provides this pamphlet as a source of information only. It is not intended to advertise, promote or endorse any real estate organization or service including but limited to “The National Association of Realtors”, or the MLS